

## MILPERSMAN 1910-148

### SEPARATION BY REASON OF HOMOSEXUAL CONDUCT

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References	CNO WASHINGTON DC 281833Z OCT 99 (NAVADMIN 291/99) CNO WASHINGTON DC 010300Z MAR 94 (NAVADMIN 033/94) Uniform Code of Military Justice (UCMJ), Article 31(b) Manual for Courts-Martial United States CNO WASHINGTON DC 131430Z APR 00 (NAVADMIN 094/00) JAG 5800.7C, Judge Advocate General Manual
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1. **Policy.** Separation processing is mandatory if the commanding officer (CO) believes, based on **credible information**, the service member has committed **homosexual conduct** as defined in MILPERSMAN 1900-010.

2. **Separation Authority.** Commander, Navy Personnel Command serves as separation authority for **all** cases involving homosexual conduct.

3. **Separation Basis**

a. Homosexual conduct exists if a service member has

(1) engaged in a homosexual act;

(2) married or attempted to marry a person of the same biological sex; or

(3) stated that he/she is a homosexual or bisexual, or made other statements indicating a propensity or intent to engage in homosexual acts.

b. Sexual orientation (e.g., heterosexual, homosexual, and bisexual) is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as defined in MILPERSMAN 1900-010.

c. Processing is not required if member committed homosexual conduct to avoid or terminate military service, and separation is not in the best interest of Navy.

#### 4. Fact-Finding Inquiries

a. If the CO questions the credibility of evidence of homosexual conduct, a fact-finding investigation may be necessary. **An investigation is not mandatory and only a CO can authorize it.** Sole purpose of an investigation is to uncover further information to assist the CO in determining whether the alleged homosexual conduct actually occurred.

b. As explained in NAVADMIN 291/99, before a CO authorizes an investigation concerning alleged homosexual conduct, the command's judge advocate should consult with the senior judge advocate assigned to the general court-martial convening authority or higher authority. Commanding officers without assigned judge advocates should consult directly with a senior judge advocate in their chain of command, or seek assistance in securing such advice from Navy Trial Service Offices or Navy Personnel Command (NAVPERSCOM). **Consultation should occur prior to initiation of any investigation.**

c. Commanding officers may personally conduct the inquiry or appoint an investigating officer.

d. As explained in NAVADMIN 033/94, members shall not be asked nor required to reveal their sexual orientation; however, when credible information indicates homosexual conduct, members may be asked if they engaged in such conduct. **Prior to any questioning, members suspected of homosexual conduct should be advised of the Department of Defense policy on homosexual conduct and apprised of their UCMJ, article 31(b) rights, if applicable.**

e. If a CO has credible evidence of possible criminal conduct, the procedures outlined in the Manual for Courts-Martial and other Secretary of the Navy (SECNAV) regulations/directives must be followed.

f. Where a service member has stated that he or she is a homosexual or bisexual and does not contest separation, little or no investigation should be necessary. A commander who suspects that a service member has made such a statement for purpose of seeking separation from naval service in order to

avoid a service obligation, and who believes the member is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, may initiate a more substantial investigation **only when authorized by SECNAV (Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN(M&RA)))**.

g. A **request for authorization** may be forwarded to NAVPERSCOM (PERS-832) for coordination with SECNAV (ASN(M&RA)). Request will provide facts surrounding disclosure, an explanation of why further inquiry is appropriate, and an assessment of any potential disadvantage of an extended inquiry.

h. **The following is a definition of "substantial inquiry:"** As explained in NAVADMIN 094/00, a substantial inquiry to determine whether a statement was made for the purpose of seeking separation from the military service in order to avoid a service obligation is an inquiry that extends beyond questioning the member who made the statement, and/or a third party who reports that a member made a statement, individuals suggested by the member for interview, and the member's immediate supervisory chain of command.

5. **Credible Information.** This table provides some examples of when credible information exists or does not exist to support initiating fact-finding inquiries:

Credible information ...	WHEN...
does not exist	<ul style="list-style-type: none"><li>• the only information is the opinion of others that a member is homosexual;</li><li>• information is based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or</li><li>• the only known information is associational activity such as frequenting homosexual bars, possessing/reading homosexual publications, associating with known homosexuals, or marching in a homosexual rights rally in civilian clothes. (Such activity, in and of itself, does not provide evidence of homosexual conduct.)</li></ul>
does exist	<ul style="list-style-type: none"><li>• member states they are homosexual/bisexual, or married to a member of the same sex, or have engaged in homosexual acts;</li><li>• a reliable person has observed or heard a member engaging in homosexual acts;</li><li>• a reliable person states they heard, observed, or discovered a member make a spoken/written statement that a reasonable person would believe was intended to convey the fact they engage in, attempt to engage in, or have a propensity to engage in homosexual acts; or</li><li>• a reliable person states they have observed behavior that amounts to a non-verbal statement by a member they are homosexual or bisexual (i.e., behavior that a reasonable person would believe was intended to convey the member engages in, attempts to engage in, or has the propensity to engage in homosexual acts).</li></ul>

6. **Processing Procedures.** Administrative Board Procedure (MILPERSMAN 1910-404) must be used. Least favorable characterization for cases based on homosexual acts and/or marriage must state Under Other Than Honorable (OTH). For cases where sole basis for processing is an admission by the service member that he/she is a homosexual or bisexual, least favorable characterization may be General (Under Honorable Conditions) (GEN).

7. **Verbatim Processing Reasons.** Reason for processing cited on member's notice of an administrative board procedure must state the member is being processed for:

"HOMOSEXUAL CONDUCT AS EVIDENCED BY: (one or more of the following phrases in its entirety)

a. member's statement that he/she is a homosexual or bisexual, or words to that effect, which creates a rebuttable presumption that he or she engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts; and/or

b. member engaging in, attempting to engage in, or soliciting another to engage in a homosexual act(s); and/or

c. member's marriage or attempted marriage to a person known to be of the same biological sex."

8. **Mandatory Separation.** Use this table to determine when separation is mandatory.

A member must be...	WHEN there is an approved finding the...	UNLESS there are further approved findings that...	THEN the administrative board may recommend...
separated	member made a statement that he/she is a homosexual or bisexual, or words to that effect	the member has demonstrated that he/she does not engage in, or have a propensity to engage in, homosexual act(s). (See Notes 1 and 2.)	retention
	member committed homosexual act(s)	<ul style="list-style-type: none"> <li>• such acts are a departure from the member's usual behavior; and</li> <li>• such acts, are unlikely to recur; and</li> <li>• such acts were not accomplished by use of force, coercion, or intimidation; and</li> <li>• under the particular circumstances of the case, the member's continued presence in Navy is consistent with Navy's interest in good order and discipline, and morale; and</li> <li>• the member does not have a propensity to engage in homosexual acts. (See Note 1)</li> </ul>	retention using the homosexual conduct board findings/recommendations sheet per MILPERSMAN 1910-516.
	member married or attempted to marry a person known to be of the same biological sex	(See Note 1)	
retained	board does not find sufficient evidence that homosexual conduct exists (See Note 1)	the case involves another basis for separation (e.g., misconduct, etc.) which member was notified of and a basis for separation is recommended.	separation for the other basis

**NOTES:**

1. The member bears the burden of proving by a preponderance of the evidence that retention is warranted.
2. In determining whether a member has successfully rebutted the homosexual acts presumption, the following (not all inclusive) may be considered:
  - a. Whether the member has engaged in homosexual acts.
  - b. Member's credibility.
  - c. Nature and circumstances of member's statement.
  - d. Testimony from others regarding member's past conduct, character and credibility.

9. Characterization of Separation.

a. Use this table to determine characterization of service.

WHEN...	THEN separation type...
during the current term of service, the member attempted, solicited, or committed a homosexual act with aggravating circumstances as follows: <ul style="list-style-type: none"><li>• by using force, coercion, or intimidation;</li><li>• with a person under age 16;</li><li>• with a subordinate in circumstances that violate customary naval superior-subordinate relationships;</li><li>• openly in public view;</li><li>• for compensation;</li><li>• aboard a naval vessel or aircraft; or</li><li>• in another location subject to naval control, under aggravating circumstances that adversely impact good order and discipline; or morale-comparable to the impact created by such activity aboard a vessel or aircraft</li></ul>	can be OTH per MILPERSMAN 1910-300.
processing by reason of statement (see Note) or homosexual acts or marriage do not meet criteria for OTH consideration cited above	may be GEN or Honorable (HON) per MILPERSMAN 1910-300.

**NOTE:** Characterization of service is based on service record in cases of homosexual conduct with no evidence (including admissions) of aggravating circumstances.

b. If the member has less than 180 days of service, an Entry Level Separation may be appropriate. See MILPERSMAN 1910-308.

c. MILPERSMAN 1910-300 provides additional characterization guidance.